

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEVE MOSHTAGH, an individual on behalf of himself and others similarly situated,

CASE NO. C19-1205RSM

**Plaintiff,**

V.

**THE HOME DEPOT U.S.A., Inc., a  
Delaware corporation,**

**ORDER DENYING MOTION TO  
CONTINUE CLASS CERTIFICATION  
DEADLINES**

**Defendant.**

This matter comes before the Court on Defendant Home Depot's Motion to Continue Class Certification Deadlines. Dkt. #31. This case was originally filed in 2019 with a class certification deadline in April, 2020. Class certification deadlines were continued twice by stipulation of the parties, the second time due to difficulties caused by the pandemic. *See* Dkts. #28 and #30.

Home Depot now states that “[d]ue to ongoing travel and other restrictions caused by the current pandemic, Home Depot has been, and remains, unable to collect the evidence it reasonably anticipates will be necessary to oppose plaintiff’s class certification motion,” specifically “video evidence to rebut plaintiff’s claim that putative class members are systematically forced to wait to exit when their shifts end after the stores are closed to the public.” Dkt. #31 at 1. Home Depot’s Motion relies heavily on the following paragraph from Regional Human Resources Director Michele Rustvold, submitted via declaration:

1           3. Collecting and downloading surveillance video in Home Depot  
2 stores will require specialized personnel to travel to each store to  
3 perform certain manual procedures. The performance of such  
4 procedures at this time, and the resulting addition of non-essential  
5 personnel who would may [sic] come into contact with Home Depot  
6 employees and customers during this process, would be inconsistent  
7 with Home Depot's current restrictions and with current COVID-19  
8 guidance and orders in the state of Washington. Due to storage  
9 limitations and cost, the video footage from Home Depot's in-store  
cameras is retained locally for approximately ninety days and then  
overwritten.

10          Dkt. #33 at 2. This is it; there is no further evidentiary support submitted to the Court explaining  
11 the difficulties in obtaining surveillance video.

12          Before addressing the merits of this Motion, the Court points out when it was filed. This  
13 Motion was noted for consideration on January 22, 2021. Plaintiffs' motion for class certification  
14 was due on January 21, 2021, and indeed has been filed already. Dkt. #39. Under this Court's  
15 Local Rules, a motion for relief from a deadline should, whenever possible, be filed sufficiently  
16 in advance of the deadline to allow the court time to rule on the motion prior to the deadline.  
17 LCR 7(j). The Court finds that Defendant Home Depot has not been diligent in filing the instant  
18 Motion for Extension of Time. This issue was well known to Home Depot for many months, yet  
19 the instant Motion was not filed with enough time for the Court to rule prior to the deadlines in  
20 question, not even close. Home Depot has not set forth adequate explanation for their delay in  
21 filing this Motion. The Motion could easily be denied on that basis.

22          A scheduling order "may be modified only for good cause and with the judge's consent."  
23 Fed. R. Civ. P. 16(b)(4). The decision to modify a scheduling order is within the broad discretion  
24 of the district court. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).  
25 "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking  
26 amendment." *Id.* at 609. If a party has acted diligently yet still cannot reasonably meet the  
27

1 scheduling deadlines, the court may allow modification of the schedule. *Id.* However, “if that  
2 party was not diligent, the inquiry should end” and the motion to modify should not be granted.  
3 *Id.* Local Civil Rule 16(m) states that “this rule will be strictly enforced” in order to “accomplish  
4 effective pretrial procedures and avoid wasting the time of the parties, counsel, and the court.”

5 Home Depot has failed to demonstrate diligence in obtaining the surveillance videos in  
6 question. The Court is well aware of the challenges caused by the current pandemic and the  
7 safety measures that must be taken. However, Home Depot’s position that it cannot collect video  
8 evidence from stores that are currently open to the public strikes the Court as poorly supported  
9 and potentially disingenuous. It is not enough for Home Depot to submit a paragraph from an  
10 HR director stating that it is impossible to send in “specialized personnel” to some backroom of  
11 an open and operating Home Depot. The Court can easily imagine how such would be possible  
12 to perform in a safe way. It is also not clear from the record why existing staff at a Home Depot  
13 cannot access or handle the security footage of the store they run and send it to the “specialized  
14 personnel.” Home Depot has had many months to work out a way to do this safely. What Home  
15 Depot has submitted in terms of evidence to support this Motion fails to demonstrate diligence.  
16

17 Given all of the above, and after reviewed the briefing, along with the remainder of the  
18 record, the Court hereby finds and ORDERS that Defendant Home Depot’s Motion to Continue  
19 Class Certification Deadlines, Dkt. #31, is DENIED.  
20

21 DATED this 25<sup>th</sup> day of January, 2021.  
22

23  
24   
25 RICARDO S. MARTINEZ  
26 CHIEF UNITED STATES DISTRICT JUDGE  
27